

**REMARKS/ARGUMENTS**

Favorable reconsideration of this application as presently amended and in light of the following discussion is respectfully requested.

Claims 9-11, 16 and 17 are pending in the present application. Claims 1-8 and 2-15 are canceled without prejudice or disclaimer. Claims 9-11 are amended and Claims 16 and 17 are added by the present amendment, all without the introduction of new matter.

In the outstanding Office Action, Claims 9-11, 13 and 15 were rejected under 35 U.S.C. § 103(a) as unpatentable over Pietzold, III et al (U.S. Patent No. 6,091,765, Pietzold) in view of Mitola (THE SOFTWARE RADIO ARCHITECTURE IEEE article).

Before considering this outstanding rejection, it is believed that a brief review of the present invention would be helpful.

In this regard, amended Claim 9 is directed to a recording medium having a program which makes a controller execute processing steps that include compiling an application program having a command to communicate using a radio signal and linking this compiled application program and a library outside of the radio communicating apparatus to produce an executable file which is executed on basic software which is executed on the radio communicating apparatus.

While the subject matter of new Claim 17 is an apparatus claim that differs in some respects as to the subject matter recited by amended independent Claim 9, it also requires compiling an application program and linking this compiled application program and a library outside of the radio communicating apparatus to produce an executable file which is executed on basic software of the radio communicating apparatus.

Amended Claim 10 is directed to a radio communicating apparatus including a communicating device configured to execute radio communication, the communicating device having an analog device to perform analog signal processing and a digital device to

perform digital signal processing. The radio communicating apparatus also includes an information storing unit that stores function information representing a function executable by both the analog device and the digital device along with selection rule information as to selecting either the analog device or the digital device to execute the function. Also included is a controller that selects the analog device or the digital device based on the selection rule to execute the function that a communication command in an application program refers to. The controller produces software by compiling the application program so as to execute the function with either the selected analog device or the digital device and executes the software.

Turning to the outstanding rejection and comparing amended independent Claim 9 to what is reasonably taught and suggested by either Pietzold and Mitola, it is noted that neither of these applied references teach or suggest all of the amended independent Claim 9 subject matter. In this regard, what Pietzold teaches to be downloaded from outside the radio communicating apparatus of Pietzold is functions contained in a library, not an executable file.

As Mitola does not cure this deficiency of Pietzold and as amended independent Claim 9 requires the controller to perform the steps of “compiling an application program having a command to communicate using a radio signal” and “linking the compiled application program and a library outside of the radio communicating apparatus to produce an executable file which can be executed on basic software which is executed on the radio communicating apparatus,” it is submitted that amended independent Claim 9 clearly patentably defines over these references.

In this last respect, even if a valid reason was presented in the outstanding Action that established actual motivation to combine teachings from these references, which is not the case, no *prima facie* case of unpatentability has been established because not all of the subject

matter claimed is taught or suggested by these references. See MPEP § 2143.03, for example.

As noted above, the subject matter of new independent Claim 17 is similar to that of independent Claim 9 in terms of requiring “compiling an application program, linking the compiled application program and a library outside of the radio communicating apparatus to produce and executable file, and executing the executable file on a basic software.” As this subject matter patentably defines over the applied references for at least the reasons noted above as to amended independent Claim 9, new Claim 17 is also believed to patentably define over these applied references.

Turning to the rejection applied to independent Claim 10, it is likewise noted that neither of these applied references teach or suggest the presently amended independent Claim 10 subject matter. In this regard, amended independent Claim 10 requires “an information storing unit configured to store function information representing a function, which both of the analog device and the digital device can execute, and configured to store selection rule information representing selection rule to select the analog device or the digital device to execute the function.” To whatever extent that Pietzold teaches user selection of instructions as noted at the bottom of page 4 of the outstanding Action, this is not the subject matter of amended independent Claim 10.

Again, as Mitola does not cure this deficiency of Pietzold as to the subject matter required by amended independent Claim 10, it is submitted that amended independent Claim 10 clearly patentably defines over these references for the reason noted above as to the requirement of MPEP § 2143.03. Again, this is the case even if the above-noted missing valid reasoning as to motivation to combine the teachings of these references had been presented, which is not the case.

As Claim 11 depends on Claim 10 and as new Claim 16 depends on Claim 9, it is submitted that these dependent claims patentably define over the applied references for at least the reasons noted above as to their respective independent parent claim. In addition, each of these dependent claims add features not taught or suggested by Pietzold considered alone or in any proper combination with Mitola. Accordingly, these dependent claims patentably define over the applied references for this reason as well.

Consequently, in light of the above discussion and in view of the present amendment this application is believed to be in condition for allowance and an early and favorable action to that effect is respectfully requested.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, P.C.



Eckhard H. Kuesters  
Attorney of Record  
Registration No. 28,870

Customer Number

**22850**

Tel: (703) 413-3000  
Fax: (703) 413 -2220  
(OSMMN 06/04)

Raymond F. Cardillo, Jr.  
Registration No. 40,440